

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE INTEGRATED)	
RESOURCE PLANNING FOR THE PROVISION)	
OF STANDARD OFFER SUPPLY SERVICE BY)	
DELMARVA POWER & LIGHT COMPANY)	
UNDER 26 DEL. C. § 1007 (c) & (d): REVIEW)	
AND APPROVAL OF THE REQUEST FOR)	PSC DOCKET NO. 06-241
PROPOSALS FOR THE CONSTRUCTION OF)	
NEW GENERATION RESOURCES UNDER 26)	
DEL. C. § 1007 (d))	
(OPENED JULY 25, 2006))	
)	

**BLUEWATER WIND DELAWARE LLC'S SUBMISSION IN OPPOSITION TO
CONECTIV ENERGY SUPPLY, INC.'S PETITION FOR REHEARING AND
RECONSIDERATION**

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Bluewater Wind Delaware, LLC ("Bluewater") submits this response in opposition to Conectiv Energy Supply, Inc.'s ("Conectiv's") Motion for Rehearing and Reconsideration filed June 11, 2007. As set forth below, Conectiv's motion should be denied because it is contrary to law, untimely and seeks to derail improperly an exhaustive, comprehensive, thoughtful and procedurally lawful process observed in this proceeding.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The Delaware Electric Utility Retail Customer Supply Act of 2006 ("EURCSA") was enacted into law in April 2006. Among other things, EURCSA directed the issuance of a Request for Proposals ("RFP") seeking new generation sources in the State of Delaware for the purpose of servicing customers utilizing Standard Offer Service ("SOS"). While EURCSA charged the Public Service Commission ("PSC") and the Delaware Energy Office (the "Energy Office") with reviewing, modifying and ultimately approving the RFP, the PSC, the Energy Office, the Office of Management & Budget, and the Office of the Controller General (collectively, the "State Agencies") were charged with evaluating the bids and determining which bidder, if any, would negotiate with Delmarva. In addition, the State Agencies have final approval of any Power Purchase Agreement ("PPA") negotiated.

Delmarva Power & Light Company ("Delmarva")¹ filed a proposed RFP with the PSC and the Energy Office on August 1, 2006 and this docket was established. See 26 Del.C. § 1007(d). Shortly thereafter, the PSC and the Energy Office retained an independent consultant (the "IC") to review, analyze and make recommendations on the

¹ Both Delmarva and Conectiv fall under the corporate umbrella of Pepco Holdings, Inc.

RFP. While under the press of tight statutory timelines, the review of the proposed RFP was extensive, with lengthy public hearings and significant written comments solicited and received.² The end result was an extensive 98 page order dated October 31, 2006 ("Order 7066"), which established the process for moving forward with the RFP and this docket.

One of the most hotly contested issues leading up to Order 7066 was the relative value or points to be given to the different categories and, in particular, the role of price. Indeed, some argued that since EURCSA does not reference price with respect to the RFP process, it should not be a factor at all. Order 7066 at 20, ¶ 43. In the end, price was made a significant component of the total allowable points, equaling 33 of 100 possible total points. Id.

Important issues with the evaluation system also received significant attention and review as part of this process. For its part, Delmarva sought to cut the State Agencies out of the process until after it reviewed and evaluated the bids. Order 7066 at 72, ¶ 161. The IC rejected this proposal and, in fact, recommended instead a test bid process so that the State Agencies could assess the bid evaluation methodology in advance of the bid submissions to ensure that those methodologies did "not contain any undue bias toward any source." Order 7066 at 73, ¶ 162.³

² Two of the three eventual bidders, Bluewater and NRG Energy Inc. ("NRG"), actively and openly participated in this process. Conectiv did not openly participate in this process.

³ While the PSC and Energy Office approved the IC recommendation for test bidding, Delmarva later claimed test bidding could not be done within the required timeframes and thus it was never performed. Order 7066 at 74, ¶ 163; IC Report dated Feb. 21, 2007 at 4.

While arguing against the use of test bidding and eventually getting its way, Delmarva also sought to impose a strict evaluation system based solely on the scoring of the bids, with no discretion for the State Agencies. Indeed, Delmarva proposed and argued vociferously for a strict, point-based evaluation system whereby the State Agencies would *be required* to select the bidder with the most points. Order 7066 at 51-52, ¶114. This effort was soundly rejected, with the PSC and Energy Office specifically concluding by unanimous vote as follows:

We agree with the IC and approve the supercategory concept. We believe that this will provide the State Agencies and their Independent Consultant with flexibility and judgment, rather than marry us to the results of a straight addition of the numbers. Where, as here, the bids will necessarily be complex and reasonable minds could differ on the number of points within a category that a particular project should be awarded, we prefer to have flexibility to go outside the bare numbers if the State Agencies think that would be appropriate.

Order 7066 at 52, ¶ 115.

In the end, Order 7066 was adopted on October 31, 2006 and was not appealed by Delmarva, Conectiv or any of the eventual bidders.

Under EURCSA, bids were to be received no later than December 22, 2006. There were bid submissions from three parties: one by Bluewater for a wind project; one by NRG for a coal fired plant; and one by Conectiv for a natural gas facility. For its part, Bluewater spent significant time, money and effort putting its team together, performing scientific, environmental and engineering research and preparing its bid submissions.⁴

On February 21, 2007, Delmarva and the IC filed bid evaluation reports, ranking the bids as follows: (a) Conectiv; (b) Bluewater; and (c) NRG. Bluewater's total

⁴ Much of the knowledge, experience and expertise this team brings to bear constitutes extremely valuable intellectual property, that is not available publicly anywhere in the world, and is otherwise highly confidential and proprietary.

Delmarva Evaluation score was 50.4, which was 16.3 points below Conectiv. Bluewater's total IC Evaluation score was 57 points, a mere 11.9 points below Conectiv. The State Agencies received significant comments from the bidders, other stakeholders and the public on the evaluations.

For its part, Bluewater took issue with the scoring methodology advocated by the Delmarva Consultant as it related to price, as it produced an anomaly that, when corrected, closed that gap between Conectiv and Bluewater. Specifically, price was a significant component of the total allowable points, equaling 33 of 100 possible total points and, by definition, price differences are a matter of degree. As such, the point allotment when evaluating price should have been done on a full scale and include all bids. Indeed, in this case, a proper full scale calculation would have resulted in Conectiv receiving 33 points, Bluewater receiving 19.1 points and NRG receiving 11.1 points.⁵

Instead, Delmarva's Consultant injected a range based on 0 - \$15 per MW hour and allocated points accordingly. This almost equated to a "winner take all" method of allocating points. To that end, the Delmarva Consultant awarded Conectiv 33 points, while only awarding Bluewater 4.8 points and NRG 0 points. Simply put, a 28.2 point differential between Bluewater and Conectiv on price was not justified when the actual

⁵ By way of further explanation, the true range between the highest and lowest priced proposal according to Delmarva's Consultant was \$30.44, with the price difference between Conectiv and Bluewater being \$12.82 per MW hour. Thus, the percentage of the price difference between Conectiv and Bluewater, based on the true price range between the highest and lowest bids, i.e. 0 - \$30.44, shows, on a linear scale, where Bluewater properly falls on that range. Bluewater and NRG should have been afforded the percentage of the total allowable points, based on where they fell on that linear scale. Doing the math as it relates to Bluewater, that means \$12.82 divided by \$30.44 equals 42.16%, which means 57.84% (100% - 42.16%) of the range is to the right of where Bluewater's price falls on the linear scale. Thus, Bluewater should have been awarded 57.84% of the 33 total points or 19.1 points.

price differential was only \$12.82 per MW hour or 1.282 cents per kilowatt hour.⁶ (A fuller explanation of the pricing methodology is in Bluewater's motion requesting that the PSC establish a formal review process, filed February 26, 2007).

In the end, after receiving the evaluations, the PSC Staff and State Agencies received and reviewed hundreds of pages of written comments, held several public hearings wherein they took testimony, reviewed numerous reports from experts in the field and analyzed the related docket of Delmarva's Integrated Resource Plan as part of this process. With the benefit of all of this input, on May 2, 2007, the PSC staff issued the "PSC Staff Review and Recommendation on Generation Bid Proposals" (the "Staff Report"). The Staff Report recommended the State Agencies direct Delmarva negotiate with Bluewater as the primary provider, while exploring the possibility of a gas fired back-up facility in Sussex County with Conectiv.

A full day hearing on the Staff Report was held on May 8, 2007 and all bidders were provided the opportunity to offer comments on the Staff Report. Mr. Purcell, manager of the Conectiv proposal, did so on behalf of Conectiv. While making it clear that more study of the Staff-suggested alternative back-up site was required, Mr. Purcell proclaimed that Conectiv "was pleased that the PSC Staff recognizes the value of natural gas power generation in meeting Delaware's future energy needs." (Transcript of May

⁶ The RFP did not provide for this type of methodology and actually called for the full scale range discussed above. Indeed, the RFP stated in pertinent part: "The price evaluation shall award 33 of the 60 available points in this category to the proposal with the lowest expected cost to Delmarva's SOS customers ... *All other proposals shall be scaled to the lowest cost proposal.*" (RFP, Section 2.5 at page 22, emphasis added). Importantly, no such artificial cap or range was imposed with respect to environmental impact – criteria pollutants, where arguably it makes more sense. There, a total of 8 points was allotted, with Bluewater receiving 8 points with no emissions and Conectiv receiving 4.9 points, despite hundreds of thousands of pounds of annual emissions into our environment. (Delmarva Evaluation at 41-42).

8th Hearing at 1697). Indeed, Mr. Purcell announced on behalf of Conectiv that "we very much look forward to working with you and Delmarva and others in going forward in the future." (Id. at 1698). Mr. Purcell was then asked by Commissioner Clark the following:

COMMISSIONER CLARK: Just a direct question: the Staff's recommendations that you be asked to sit down and negotiate with Delmarva regarding siting at a different location - - well, you have obviously read it, you are not opposed to doing that?

MR. PURCELL: No, sir, we are not. We look forward to the negotiations.

(Id. at 1698-1699). Importantly, no mention was made of challenging the Staff recommendations and, in fact, at no time during the May 8th Hearing did Conectiv indicate it was opposed to the Staff recommendation.⁷ The Hearing concluded with the PSC making some modifications to the Staff Recommendations and voting to adopt the recommendations as amended. The remaining state agencies deferred.

A second hearing was held on May 22, 2007, wherein the State Agencies considered a proposed order reflecting the results of the May 8th Hearing. Conectiv filed no comments in opposition or otherwise to the Staff Report or the proposed order. At the May 22nd Hearing, Conectiv's General Counsel, Mr. Rosenstein, testified that:

I would like to restate Conectiv Energy's interest in continuing to participate in this process. If, in fact, we are asked to negotiate, we intend to negotiate. We continue to have an interest in doing the best we can do.

(Transcript of May 22nd Hearing at 15). The other bidders and members of the public also testified at the hearing. In the end, the proposed order ("Order 7199") was unanimously adopted by the State Agencies with some modifications.

⁷ In addition to the bidders, members of the public testified at the May 8th Hearing, with most, if not all, expressing support for the Bluewater project. (Order 7199 at 26, ¶49.).

With the adoption of Order 7199, the PSC Staff promptly retained an independent mediator to monitor the negotiations, which began on May 30, 2007 and have been on-going with all parties, including Conectiv. On June 8, 2007, Conectiv changed its tune, filing a motion for reconsideration pursuant to PSC Rule 34(b) seeking to: (1) terminate the negotiations it previously testified it supported; (2) terminate all on-going negotiations and negotiate exclusively with its affiliate company, Delmarva, for the original Conectiv Hay Road proposal; and (3) in the alternative, terminate all on-going negotiations so that the process can begin anew with Conectiv bidding to build a wind farm.

For the reasons stated below, Bluewater opposes this motion.

II. DISCUSSION

The development of new generation resources is a critical policy issue for the State of Delaware and one that deserves and has, in fact, received, significant public input. Indeed, issues related to the true environmental impact of these proposals, the real long-term costs/value to consumers and the viability of the technologies, will affect Delawareans for decades to come.

Not only does Conectiv's Motion for Reconsideration of Order 7199 raise issues with this process that are time-barred, it fails to recognize the hundreds of hours of testimony, thousands of pages of written submittals, millions of public and private dollars spent and countless hours of work by the State Agencies that culminated in Order 7199. Moreover, Conectiv's alternative request to start the process over so it can bid a wind farm is untimely, lacking any support in the law and would otherwise result in great prejudice to Bluewater.

A. The State Agencies Were Not Bound By Strict Adherence to Evaluation Scores And Conectiv's Arguments To The Contrary Are Time Barred.

Conectiv's Motion for Reconsideration rests on the faulty premise that the State Agencies were obligated to strictly adhere to the evaluation scores in making their decision as to whom Delmarva will be directed to negotiate with. This is not the case. In fact, this very issue was thoroughly reviewed and considered with the adoption of Order 7066.

In so doing, the PSC and Energy Office unanimously rejected this approach. Specifically, Order 7066 provides in pertinent part:

We agree with the IC and approve the supercategory concept. We believe that this will provide the State Agencies and their Independent Consultant with flexibility and judgment, rather than marry us to the results of a straight addition of the numbers. Where, as here, the bids will necessarily

be complex and reasonable minds could differ on the number of points within a category that a particular project should be awarded, we prefer to have flexibility to go outside the bare numbers if the State Agencies think that would be appropriate.

Order 7066 at 52, ¶ 115 (emphasis added). As such, the premise of Conectiv's argument is simply wrong. The State Agencies specifically afforded themselves the flexibility to make judgments outside the bare numbers provided in the evaluations.

While the debate on this subject is time-barred at this juncture, it is worth noting that the decision not to be bound by a strict adherence to the evaluation scoring was very prudent. The construct of EURCSA, given the position of the parties, is a bit unusual. For example, Delmarva made it clear from the beginning of the process that it did not desire a PPA for new generation, yet Delmarva and its consultant played a significant role in evaluating and scoring the bids. To add to the mix, Delmarva's own affiliated company, Conectiv, submitted a bid, despite not showing its hand and participating officially in the process to develop the RFP. Importantly, the test-bidding which the IC deemed very important to ensure there was not bias in the evaluation system, was never done - - due to Delmarva's resistance. Accordingly, given the above, the preservation of the authority of the State Agencies to exercise independent judgment, outside the confines of the evaluation scores, was critically important to the efficacy of this process.

In the end, Conectiv seeks with this motion to essentially re-argue the merits of Order 7066, arguing that the flexibility and discretion afforded the State Agencies was somehow in violation of EURCSA. However, neither Conectiv nor its affiliated company, Delmarva, appealed Order 7066 on this or any other point, even though Delmarva objected to this flexibility. Further, PSC Rule 34(b) requires motions for reconsideration to be filed within 30 days of the entry of the Order and Conectiv has long

since missed that deadline with respect to Order 7066. In short, Conectiv's argument along these lines is time barred and must be rejected.

B. Substantial Evidence Exists To Support The Decision Of The State Agencies

Being time-barred from arguing that the State Agencies should not have afforded themselves flexibility in evaluating the bids, Conectiv is left with the argument that the State Agencies' exercise of judgment and flexibility was somehow not supported by substantial evidence or not otherwise consistent with EURCSA. Both arguments fail and must be rejected.

To begin, it is clear from the record that evaluation scores essentially provided a starting point for the State Agencies in their analysis of the bids. To their credit, the State Agencies embarked on an exhaustive process after the release of the evaluations that included: oral argument on the evaluations on February 27, 2007; an extended written public comment period that closed on April 6, 2007; public hearings in all three counties held on March 6, 7, and 12, 2007, wherein hundreds of persons attended and many in attendance made public comments; an IC review of Delmarva's Integrated Resource Plan to determine whether the IRP would affect the RFP process; and transmission analysis from PJM and Powerworld. It is the combination of all of this information and evidence that resulted in the State Agencies exercising their judgment and flexibility, as provided in Order 7066, as evidenced by Order 7199. To suggest that reliance on this level of information and evidence does not meet the substantial evidence test is specious and not worthy of consideration.

Conectiv also seems to suggest that the State Agencies' exercise of discretion and flexibility in this instance was somehow per se in violation of EURCSA. In making its

pronouncements, Conectiv ignores the fact that price is not even mentioned in the provisions outlining the RFP process. Moreover, while the price increases in the spring of 2006 were clearly part of the impetus behind EURCSA, of equal or greater concern on the part of the General Assembly was lack of price stability. 26 Del. C. § 1007(c)2(vii).

Beyond the specific statutory provisions, Delaware case law firmly establishes that when considering the authority granted to an administrative agency, courts must look to the legislative intent or policy and construe statutory provisions with an eye toward granting the agencies the power to meet that intent and/or policy. See State v. Worsham, 638 A. 2d 1104, 1107 (Del. 1994). To this end, the goal of price stability clearly was emphasized in the March 8, 2006, Cabinet Committee on Energy Report (the "Cabinet Committee Report"), an important precursor to House Bill No. 6. The Cabinet Committee Report comprehensively reviewed the circumstances of electricity restructuring and recommended, among other things, that the State endeavor to "procure long term non-fossil resources (including DSM) and pass on to the ratepayers the *resulting price stability, rather than leaving them exposed to market fluctuation.*" (Report at 22, emphasis added). As much as anything, EURCSA represents legislative frustration that Delmarva, after deregulation was approved in 1999, elected to sell off all of its generation (including selling off some to affiliates like Conectiv) and left its ratepayers without competition yet completely vulnerable to punishing and volatile swings in the energy markets.

The Synopsis of the original House Bill 6, is also indicative of the General Assembly's intent and policy goals along these lines. The very first sentence of the Synopsis provides:

This Act *comprehensively* amends the Electric Restructuring Act of 1999 by including a number of provisions designed to *stabilize electricity pricing and utilization for Delaware consumers for both the short term and for the long term.*

Thus, the legislative record is clear, the policy goals of EURCSA focused on price stability - - a *comprehensive* rewrite of the Electric Restructuring Act of 1999 *to stabilize electricity prices.*

Importantly, Bluewater's proposal is the only proposal that offered price stability, with Conectiv providing negligible price stability. See Staff Report at 23 (noting that Delmarva's own consultant scored Bluewater's proposals substantially superior to Conectiv on the issue of price stability). Conectiv's proposal in fact would subject Delmarva ratepayers to the very volatile market conditions that policymakers sought to avoid in enacting EURCSA, and it was appropriate for the State Agencies to take such conditions into account when considering Order 7199.⁸

C. Conectiv Should Not Be Permitted To Bid A Wind Project.

After the State Agencies and bidders have expended countless hours and hundreds of thousands of dollars, Conectiv now asks the State Agencies to toss the entire process aside, so that Conectiv can submit a bid to build a wind farm. Putting aside the substantial prejudice such a decision would impose upon Bluewater, Conectiv had every opportunity propose and bid a wind farm back in December of 2006 and elected not to do so. The notion that negotiations with the winning bidder would be terminated so Conectiv could be permitted to go back in time and do what it elected not to do in December is preposterous and finds no support in the law.

⁸ Tellingly, natural gas prices are up 25% from a year ago. See "Natural Gas Prices Highest Since December," U.S.A. Today (June 5, 2007).

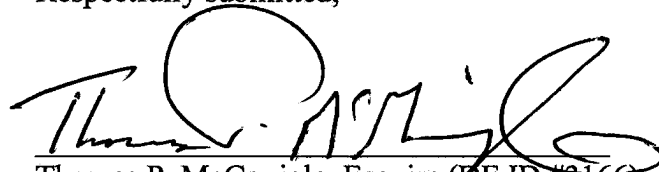
Conectiv's 12th-hour request that it be permitted to bid wind generation should also be denied because to permit it to do so would be futile. Neither Conectiv nor any of its affiliates is in the wind power business or claims to have any expertise with wind power whatsoever. Presumably, Conectiv did not bid wind in December because it is not in that business. Conectiv should not be permitted to reverse its decision and negate six months of expenditure and work so that it can bid a wind project, when it has absolutely no stated interest or track record with respect to wind power.

Finally, given Conectiv's affiliation with Delmarva and the highly confidential and proprietary information submitted to Delmarva by Bluewater as part of its bid, a decision to permit Conectiv to now bid to build an offshore wind farm, raises grave concerns. Indeed, Bluewater invested over a million dollars in this process and simply tossing it aside so that a disgruntled bidder can re-bid the project, would result in substantial prejudice to Bluewater. This request must be rejected.

III. CONCLUSION

For the reasons stated above, Conectiv's Petition for Rehearing and Reconsideration is without merit and should be denied in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas P. McGonigle", written over a horizontal line.

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